

# **COMPLIANCE AUDIT REPORT**

**STATE OF MAINE  
WORKERS' COMPENSATION BOARD**



**HANNAFORD BROTHERS**  
**January 8, 2003**

**Office of Monitoring, Audit & Enforcement**

Paul Dionne  
Executive Director

Steven P. Minkowsky  
Deputy Director of Benefits Administration

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## SUMMARY

The Audit Division of the Maine Workers' Compensation Board (WCB) examined 101 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Our audit revealed:

Hannaford Brothers (HB) is a self-insured group and its workers' compensation coverage is self-administered. All claims were handled at HB's office in Scarborough Maine.

The HB claims listing that was sent to the WCB contained 1,167 claims for the year 2001. One hundred claims were chosen from that population for the audit sample. An additional claim was added to the sample due to a "Complaint for Audit". Of the 101 claim files audited, there were 27 "lost time" claims, 69 "medical only" claims and 5 "incident only"<sup>1</sup> claims.

Our on-site audit of HB began August 19, 2002, and ended August 23, 2002. The compliance tables found on pages 9 through 11 of this report are representative of our findings. Following is a discussion of the aforementioned compliance tables.

- All reportable claims identified had been reported to the Board at the time of audit.
- The 27 "lost time" claims sort out as follows:
  - Form filing:
    - Twelve claims were compensated lost time claims.
      - Ten compensated lost time claims' Employer's First Report of Occupational Injury or Disease (WCB-1) were filed timely which is in compliance with Title 39-A, M.R.S.A, section 303.
      - Two compensated lost time claims were Lump Sum Settlements (LSS); therefore no form filing review was completed for WCB-1.
    - Fifteen claims were non-compensated lost time claims.
      - Fifteen non-compensated lost time claims' Employer's First Report of Occupational Injury or Disease (WCB-1) were filed timely which is in compliance with Title 39-A, M.R.S.A, section 303.

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<sup>1</sup> "Incident only" Claims incur no medical expenses and less than a day of lost time.



## SUMMARY (continued)

Title 39-A, M.R.S.A section 303 provides the requirements for reports to board.

- It appears that the First Report (WCB-1) filing requirements were 100 percent compliant. HB has a clear understanding of the requirements to file this form timely. See "Form Filing".
- The Wage Statement (WCB-2) and Schedule of Dependent(s) and Filing Status Statement (WCB-2A) compliance rates for these forms filed timely appears to be 72 and 69 percent respectively. Once a Notice of Controversy (WCB-9) is filed contesting lost time then these forms are required to be filed with the WCB. The requirements for filing these two forms are found in Title 39-A, M.R.S.A section 303. See "Form Filing".
- The Memorandum of Payment (WCB-3) compliance rate appears to be 90 percent, which exceeds the Workers Compensation Boards' performance benchmark of 75 percent. See "Form Filing".
- The Modification (WCB-4) compliance rate appears to be 100 percent. HB has a clear understanding of the requirements to file this form timely. See "Form Filing".
- The WCB-9 compliance rate appears to be 100 percent. HB has a clear understanding of the requirements to file this form timely. See "Form Filing".
- The Statement of Compensation Paid (WCB-11) compliance rate appears to be 20 percent. HB did not understand (at that time) the Rule 8.1 change of March 4, 2001. HD now has a clear understanding of the rule change for all claims. " See "Form Filing".

### ➤ Timeliness of the twelve compensated claims:

- Two were LLS claims; both claimants were paid the settlement timely.
- Eight compensated claims were paid the initial indemnity benefit timely, which is in compliance with Title 39-A, M.R.S.A. section 205.
- Two claimants were not paid the initial indemnity benefits timely, which is not in compliance with Title 39-A, M.R.S.A. section 205.
  - One initial payment was made on the 16<sup>th</sup> day.
  - One initial payment was made on the 18<sup>th</sup> day.
- One hundred and seventy two of the subsequent payments were paid within the 7-day requirement, which is in compliance with. Title 39-A, M.R.S.A. section 205.
- Four subsequent payments were paid between the 8<sup>th</sup> and the 14<sup>th</sup> day and four were paid after the 15<sup>th</sup> day, which is not in compliance with Title 39-A, M.R.S.A. section 205.

## SUMMARY (continued)

- Two subsequent indemnity payments shown as “15+” were made later than 30 days after payment became due and payable, and are subject to the provisions of §205(3). (see page 7).
  - One was paid 212 days after payment was due. The claimant was paid the first day of incapacity on 08/29/02 as a result of this audit.
  - One was paid 429 days after payment was due. The claimant was paid the seven-day wait period on 11/21/02 as a result of this audit.
- The initial indemnity payment benefit compliance rate is at 80 percent. This compliance rate meets the WCB performance benchmark, which is at 80 percent. See “Indemnity Benefits”.
- The subsequent payment of benefits compliance rate is 98% percent. See “Indemnity Benefits”.

Title 39-A, M.R.S.A. section 205 (2) provides the requirements for benefit payment.

➤ Accuracy of the twelve compensated claims:

- Two (2) claims were paid the LSS accurately.
- An underpayment of \$130.36 in aggregate was discovered.

The following is a brief description for each claimant that had the appearance of non-compliance under Title 39-A, M.R.S.A. section 212 and/or 213.

- One claimant had very minor errors that resulted in an overpayment of \$0.43 after the claimant was paid \$40.69 for the first day of incapacity.
- One claimant had the wrong number of dependents and the wrong federal tax filing status used to chart the rate (“S/0” was used instead of MJ/1) this resulted in an underpayment. This underpayment was paid to the claimant after the discovery of this error. The wrong weeks were used to calculate AWW, when corrected it resulted in a lower AWW. The combined errors resulted in an overpayment of \$35.55
- Two claimant’s underpayments resulted because of the calculation of a partial rate.
  - ♦ One employee was totally disabled as of 1/18/01 because of surgery. The last day of the week was 1/19/01. The employee should have been on total disability for the two days (2/7ths of total rate, \$96.38). Hannaford Brothers paid the employee on a partial rate, which resulted in a payment of \$68.64. It appears that the employee has been underpaid in the amount of \$27.74.



## SUMMARY (continued)

- ◆ One employee was totally disabled as of 1/10/02 because of surgery. The last day of the week was 1/12/02. The employee should have been on total disability for the three days (3/7ths of total rate, \$119.84). Hannaford Brothers paid the employee on a partial rate which, resulted in a payment of \$45.02. It appears that the employee has been underpaid in the amount of \$74.82
- One claimant has an overpayment of \$7.15, due to the occasional use of the wrong rate column on the Weekly Benefit Table.
- One claimant had an underpayment of \$94.63, which was paid to the claimant after audit discovery of the use of the wrong rate from the Weekly Benefit Table. In addition to this error, the wrong weeks were used for calculation of the AWW. In aggregate the claimant was overpaid by \$15.92.
- One claimant has an underpayment of \$125.51. A reduction of benefits (WCB-4) was filed effective 03/24/01; therefore all partial compensation prior to that date should be based on actual earnings. HB incorrectly underpaid the claimant based on a “cap” prior to that date. To date WCB Audit Division has not received documentation of a payment to this claimant.
- One claimant had an overpayment of \$38.66, after the claimant was paid \$314.46 for the seven-day wait period. The miscellaneous errors were due to the occasional use of the wrong column on the Weekly Benefit Table.
- The accuracy of both, average weekly wage calculations and weekly benefit rate, compliance rates are at 80 percent. See “Indemnity Benefits”.

Title 39-A, M.R.S.A section 212 and 213 provides requirements for compensation for total incapacity and partial incapacity.

The Audit Division would like to thank Hannaford Brothers and it’s staff for the use of their facilities and providing the audit staff the necessary materials needed to complete the audit in a proficient manner. HB has graciously complied with all the requests from this Division.

## Subsequent Events

HB submitted a statement of objections outlining areas of disagreements with this audit subsequent to the issuance of the draft audit report dated January 8, 2003. A rebuttal hearing was scheduled and executed. As a result of the rebuttal hearing process, a Schedule of Comments and Recommendations can be found as an addendum to this report. All pertinent, relevant, and accurate Auditee responses have been included.

## PENALTIES

◆ **Section 205(3), M.R.S.A. Penalties (payable to injured employees)**

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Edna Allen Vs. Hannaford Brothers Date of Injury: 08/16/01 HB File Number: 0101282 WCBN Number: 01-01-73-96 ( <i>Finding 01-01, See page 13</i> )	Subsequent payment of the first day of incapacity was not paid timely. Payment became due 01/29/02. However it was paid 212 later on 08/29/02.	\$1,500.00
Angela Tilton Vs. Hannaford Brothers Date of Injury: 07/27/01 HB File Number: 0101154 WCBN Number: 01-00-99-32 ( <i>Finding 01-02, See page 13</i> )	Subsequent payment of the seven-day waiting period of incapacity was not paid timely. Payment became due and payable on 9/18/01. However it was paid 429 days later on 11/21/02.	\$1,500.00
<b>Total Penalties to Injured Employees</b>		<b>\$3,000.00</b>

## PENALTIES (continued)

### ◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

➤ The Deputy Director of Benefits Administration (DDBA) has the authority to refer any insurance company to the Abuse Investigation Unit to pursue penalties under §359(2) should it be warranted.

- The DDBA will not proceed with a referral as a result of this audit.

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

➤ One (1) form was not filed (\$100.00) (*Finding 01-03, See page 14*)

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

➤ Fourteen (14) forms were filed late (\$1,400.00) (*Finding 01-04, See page 15*)



## PENALTIES (continued)

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

- ➤ The Deputy Director of Benefits Administration (DDBA) has the authority to refer any insurance company to the Abuse Investigation Unit to pursue penalties under §360(2) should it be warranted.
- The DDBA will not proceed with a referral as a result of this audit.

## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	8	80%
15+			2	20%
Total Due			10	100%

### B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	172	96%
8-14	Days		4	2%
15+	Days		2	1%
Unknown	Days		2	1%
Total Due			180	100%

### C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	8	80%
Incorrect			2	20%
Total			10	100%

### D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	8	80%
Incorrect			2	20%
Total			10	100%

## FORM FILING

### A. First Report (WCB-1)

		2001	
Received at the Board:		Number	Percent
Filed	<b>Compliant</b>	31	100%
Total		31	100%

### B. Wage Statement (WCB-2)

		2001	
Received at the Board:		Number	Percent
Filed	<b>Compliant</b>	10	72%
Filed Late		3	21%
Not Filed		1	7%
Total		14	100%

### C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
Received at the Board:		Number	Percent
Filed	<b>Compliant</b>	9	69%
Filed Late		4	31%
Total		13	100%

### D. Memorandum of Payment (WCB-3)

		2001	
Received at the Board:		Number	Percent
Filed	<b>Compliant</b>	9	90%
Filed Late		1	10%
Total		10	100%



## FORM FILING (continued)

### E. Discontinuance or Modification (WCB-4)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	7	100%
Not Filed		0	0%
Total		7	100%

### F. Notice of Controversy (WCB-9)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	12	100%
Filed Late		0	0%
Total		12	100%

### G. Statement of Compensation Paid (WCB-11)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	3	30%
Not Filed		7	70%
Total		10	100%

## SUMMARY OF FINDINGS AND AUDITEE RESPONSE

**Finding Number:** 01-01

**Finding:** Section 205(3) Violation

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

**Claim:** Edna Allen, WCBN 01.01.73.96

**Comment:**

The first day of compensability on this claim was miscalculated. As a result, this claimant was not paid for that first day when it became due and payable, and when tabulated, was paid incorrectly as well.

**Recommendation:**

The WCB Audit Division recommends that HB pay its claimants in accordance with Title 39-A §§ 212, 213 & 205 (2) of the Maine Workers' Compensation Act and the Forms Manual issued by the WCB.

**Auditee Response:**

*Hannaford admits it miscounted the first day of compensability on a claim and that as a result, the initial indemnity payment was \$40.69 lower than it should be. Hannaford disputes that there was an incorrect payment for reasons other than missing the first day of compensability. Hannaford agrees with the recommendation and acknowledges that the Forms Manual can be helpful as an administrative tool but disputes that the Forms Manual can serve as the basis for establishing any legal standards.*

*Hannaford believes that the § 205(3) penalty is intended for untimely payments, not for incorrect payments. Rather than contest the matter, however, Hannaford will pay \$1,500 to the claimant without any prejudice to its ability to contend in future proceedings that § 205(3) has been misapplied.*

**Final Comments:**

The WCB's position is that pursuant to Section 205 (3), indemnity payments must be timely and accurate, while HB disagrees, the WCB and HB reached a resolution through the consent decree/rebuttal process.

**Finding Number:** 01-02

**Finding:** Section 205(3) Violation

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

## **SUMMARY OF FINDINGS AND AUDITEE RESPONSE (continued)**

**Claim:** Angela Tilton, WCBN 01.00.99.32

**Comment:**

HB neglected to pay this claimant within the statutory guidelines for the first week of compensability. The first week of indemnity (waiting period) became due and payable on 9/18/01, it was not paid until brought to HB's attention during the course of this examination wherein it was promptly paid to the claimant on 11/21/02.

**Recommendation:**

The WCB Audit Division recommends that HB pay its claimants timely and accurately in accordance with Title 39-A §§ 212, 213, & 205(2) of the Maine Workers' Compensation Act and the Forms Manual issued by the WCB.

**Auditee Response:**

*Hannaford disputes that any payment was untimely. The allegedly incorrect amount arose because the Hannaford employee had second employment that was not included in the initial timely payment. At the time of the injury, the employee was asked by Hannaford about her wages at the second employer and was told by the employee that she, "did not wish to pursue the wages."*

*Hannaford disagrees but in the spirit of cooperation with the auditors, contacted the second employer about its wage history; a contact that continues to be ignored. Rather than contest the matter, Hannaford has paid the \$37.50 as compensation for the three hours the employee has said she might have lost from work with the second employer and will pay \$1,500 to the claimant without any prejudice to its ability to contend in future proceedings that § 205(3) has been misapplied.*

**Final Comments:**

The WCB's position is that pursuant to Section 205 (3), indemnity payments must be timely and accurate, while HB disagrees, the WCB and HB reached a resolution through the consent decree/rebuttal process.

**Finding Number:** 01-03

**Finding:** Section 360(1)(A) Violation

"The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;"

**Claim:** Various Claims



## SUMMARY OF FINDINGS AND AUDITEE RESPONSE (continued)

### **Comment:**

HB neglected to file a Wage Statement (WCB-2), a WCB prescribed form, in accordance with the statutory guidelines for said form.

The WCB is seeking a penalty on the grounds that Title 39-A, M.R.S.A. § 102 (4)(E) requires the filing of a wage statement containing the wages earned while working for a concurrent employer.

### **Recommendation:**

The WCB Audit Division recommends that HB file all WCB prescribed forms in accordance with Title 39-A, §§ 303 and 102(4)(E) of the Maine Workers' Compensation Act as well as the forms manual issued by the WCB.

### **Auditee Response:**

*Hannaford contends that the Schedule of Dependents was mailed on August 7, 2001, eleven days after the date of injury, well within the 30 day time period required by law, 39-A M.R.S.A. § 303. With respect to the alleged late filing of the Wage Statement, please see the Auditee Response to Finding Number 01-02.*

### **Final Comments:**

The WCB is concerned that HB does not have a clear understanding of the use § 102 (4)(E).

### **Finding Number: 01-04**

### **Finding: Section 360 (1)(B) violation**

"The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act."

### **Claim: Various Claims**

### **Comment:**

HB neglected to file fourteen (14) WCB prescribed forms in accordance with statutory guidelines for said forms.

### **Recommendation:**

The WCB Audit Division recommends that Hannaford Brothers Co. file all WCB forms in accordance with Title 39-A § 303 of the Maine Workers' Compensation Act as well as the Forms Manual issued by the WCB. We also recommend that Hannaford Brothers Co. implement controls to ensure that all changes to the filing requirements of all WCB prescribed forms be known by all parties involved in their filing.

## **SUMMARY OF FINDINGS AND AUDITEE RESPONSE (continued)**

### **Auditee Response:**

*Hannaford admits that seven (7) WCB-11s were filed late.*

*With respect to the other forms alleged to be late, the Board alleges that a MOP was filed late. The MOP was filed on August 15, 2001, 12 days after the start of when compensation was first owed.*

*The remaining six of the alleged late filings (three Wage Statements and three Schedule of Dependents) arise from three claims in which, Hannaford filed "preventative" Notices of Controversy, indicating that "indemnity" would be in dispute if the employee requested those benefits and noting in the "Comments" section that the employees had not requested indemnity benefits (meaning that no obligation to file Wage Statements or Schedules had arisen). With the filing of the NOCs, Hannaford (1) alerted the employee to possible claims they might have and (2) ensured that the employees could discuss those possibilities with a WCB troubleshooter. Rather than contest the matter, however, Hannaford will pay the \$400 without any prejudice to its ability to assert in future proceedings its defenses to the contentions of the WCB.*

### **Final Comments:**

In the case where the Schedule of Dependents (WCB-2A) was reported and penalized as filed late, the form was due by 9/3/01 but was not received at the WCB until 8/21/02.

In this same case where the Memorandum of Payment (WCB-3, MOP) was reported and penalized as filed late, the form was due by 8/10/01 but was not received at the WCB until 8/15/01.

### **Ending Comments:**

The Workers' Compensation Board and Hannaford Brothers Co. were unable to resolve their disagreements on all of the above issues but have reached a mutually acceptable resolution through the consent decree/rebuttal process.